EX PARTE VICNANDAN MARIA DASS

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN YUNUS J
[ORIGINATING SUMMONS NO: S7-24-1538-2000]
7 JULY 2000

LEGAL PROFESSION: *Professional discipline - Practice and etiquette rules - Professional independence - Maintenance of - Solicitor represented purchaser in sale and purchase of land - Whether same solicitor can act for vendor in an application under s. 60(4)(a) of Probate and Administration Act 1959 - Conflict of interest - Whether solicitor must bear costs of application*

The applicant as administrator of his late father's estate applied *ex parte* for the court's permission to transfer a piece of land under the estate to a purchaser. This application under s. 60(4)(a) of the Probate and Administration Act 1959 was filed by Mr Krishnan Papoo of M/s Krishnan Papoo & Assoc ('KP'). As it transpired, KP was the solicitor who had acted for the purchaser in the sale and purchase agreement between the purchaser and the applicant.

Held:

[1] KP who had acted for the purchaser in the sale and purchase agreement could not, legally, act for the applicant in the instant application. There would be a conflict of interest. KP should not, having regard to r. 5(a) of the Legal Profession (Practice and Etiquette) Rules 1978, have accepted the brief from the applicant. It would be difficult for KP to maintain his professional independence.

[Application dismissed; costs to be borne by counsel for applicant personally.]

Legislation referred to:
Legal Profession (Practice and Etiquette) Rules 1978, r. 5(a)
Probate and Administration Act 1959, s. 60(4)(a)

For the applicant - Krishnan Papoo; M/s Krishnan Papoo & Assoc

Reported by Gan Peng Chiang

JUDGMENT

Hishamudin Yunus J:

This is an *ex parte* application by the applicant as an administrator of the estate of his late father, Mariaraju a/l M. Anthony. By this application, the applicant seeks the permission of the court to transfer a piece of land

(H.S.(D) 9145 Lot 3795, Mukim Cheras, Daerah Ulu Langat) belonging to the estate of the deceased (Mariaraju) to one Ng Sau Kheng pursuant to a sale and purchase agreement dated 17 January 2000 made between the applicant (as the vendor) and the said Ng Sau Kheng (as the purchaser).

This application is made pursuant to s. 60(4)(a) of the Probate and Administration Act 1959 which provides:

> 60. **Power of personal representative to dispose of property.**
>
> (4) An administrator may not, without the previous permission of the Court:
>
> (a) ... transfer by sale ... any immovable property situate in any State and for the time being vested in him;

In this application, the applicant (administrator cum vendor) is represented by Encik Krishnan Papoo of Messrs. Krishnan Papoo & Associates.

In the sale and purchase agreement (exhibited in the supporting affidavit as "exh. V3") it is stated in the schedule that Messrs. Krishnan Papoo & Associates acts as the purchaser's (Ng Sau Kheng's) solicitor for the purpose of the sale and purchase transaction.

In the sale and purchase agreement, Encik Krishnan Papoo attested the signature of the applicant/vendor (Vicnandan) and also the signature of the purchaser Ng Sau Kheng.

Encik Krishnan, when asked by me during the hearing of this application confirmed that he acted for the purchaser Ng Sau Kheng in the sale and purchase transaction.

The applicant/vendor, Vicnandan, did not appoint any solicitor for the purpose of the sale and purchase transaction. But he employs Encik Krishnan Papoo for the purpose of the present application. And it was Messrs. Krishnan Papoo & Associates that filed the present application.

I am dismissing this application on the ground that Encik Krishnan Papoo, being the solicitor for the purchaser in the sale and purchase transaction between the applicant/vendor and the purchaser, legally, cannot represent the applicant/vendor in the present application. Clearly there is a conflict of interest situation here. He ought to have advised the applicant to engage another solicitor to represent him for the purpose of the present application.

I order that the cost of this application be borne by Encik Krishnan Papoo personally.

Rule 5(a) of the Legal Profession (Practice and Etiquette) Rules 1978 stipulates that:

> 5. **No advocate and solicitor to accept brief if difficult to maintain professional independence.**
>
> (a) No advocate and solicitor shall accept a brief if such acceptance renders or would render it difficult for him to maintain his professional independence or is incompatible with the best interest of the administration of justice.

In my view, in the circumstances of the present case, Encik Krishnan, with respect, should not have accepted the brief from the applicant/vendor. For, as he is also the solicitor for the purchaser, it would be difficult for Encik Krishnan, in the present application before me, to maintain his professional independence in representing the applicant/vendor.

In the course of the hearing of this application, Encik Krishnan was given the opportunity to state his view on this issue of conflict of interest and on the Legal Profession (Practice and Etiquette) Rules 1978.

There are other unsatisfactory aspects of this application but, in view of the above ground, I do not think it is necessary for me to go into them.